

SAN JOSE APPEALS HEARING BOARD MINUTES
THURSDAY, NOVEMBER 12, 2015
6:30 P.M. COUNCIL CHAMBERS

1. The meeting of the San Jose Appeals Hearing Board convened this date at 6:31 p.m., Council Chambers, City Hall, with the following members in attendance: Chair David Parker, Vice Chair Ron Cabanayan, Commissioners Karen Parsons, Andrew Ditlevsen, Timothy Kenny and Robyn Shearin. Commissioner Rajwant Bains was absent.

Staff Present: Carolyn Slezak, Code Enforcement
Joseph Hatfield, Code Enforcement Supervisor
Karla Cáceres, Appeals Hearing Board Secretary
Regina Mancera, Code Enforcement
Tony Gonzalez, Code Enforcement Inspector
Todd Waltrip, Code Enforcement Supervisor
Rosa Tsongtaatarii, Senior Deputy City Attorney
William Gerry, Code Enforcement

2. **Approval of Minutes**

Chair Parker read a statement to the public regarding the general procedures for the hearings and requested that speakers submit a speaker's card for the item they wish to speak on. Commissioner Kenny made the motion and Commissioner Ditlevsen, second the motion, Commissioner Parsons abstained, to approve the minutes of October 8, 2015.

3. **Requests for Deferrals**

Robert Gundrent, attorney for Property Owner Michael Musumeci, requested a deferral 60-days for item 6b because he was only recently contacted to represent his client, and this deferral would provide his client time to reach full compliance.

There was a motion by Commissioner Parker, seconded by Commissioner Kenny to deny the request for deferral for item 6b.

AYES: Cabanayan, Ditlevsen, Kenny, Parker and Parsons
NAYS: Shearin
ABSENT: Bains

4. **Public Hearings**

- a. **1505 McGuinness Ave (488-07-029) Summary Abatement**
(Tony Gonzalez, Inspector / Luella Mae Riley & Richard E Riley, Property Owner)
- b. **739 West Julian Street (261-01-094) Summary Abatement**
(Tony Gonzalez, Inspector / Speno Enterprises, LP, Anthony Speno/Property Owners)
- c. **684 SOUTH 10TH STREET (261-01-094) SUMMARY ABATEMENT**
(Tony Gonzalez, Inspector/ Maritza Rodriguez and Clear Recon Corp "Property Owner")

Motion by Commissioner Parsons, seconded by Commissioner Kenny to approve the Consent Calendar for the properties located at 1505 McGuinness Ave, 739 West Julian St, and 684 South 10th St.

AYES: Cabanayan, Ditlevsen, Kenny, Parker, Parsons and Shearin

NAYS:

ABSENT: Bains

5. **Deferred and/or Continued Items**

6. **Public Hearings**

- a. **115 South 28th Street (467-35-091) Summary Abatement/ Condemnation**
(James Young, Inspector / Andre DeVargas & Diane DeVargas, Property Owner)

Code Enforcement Inspector Supervisor Todd Waltrip gave a summary of the inspections at the subject property and the reason for condemning the property. Supervisor Waltrip stated that as of November 10, 2015 the property owner is in compliance.

There was a motion by Commissioner Kenny, seconded by Commissioner Parsons, to order as follows:

Motion to uphold the abatement action taken by the City to condemn the property at 115 South 28th Street.

AYES: Cabanayan, Ditlevsen, Kenny, Parker, Parsons and Shearin
NAYS:
ABSENT: Bains

- b. **5756 Condor Circle (567-28-039) Administrative Remedy**
(William Gerry, Inspector / Carmine Joseph Musumeci
Anna Maria Musumeci Trustees or Their Successors in Trust, Under the
Musumeci Living Trust, Property Owner)

Code Enforcement Inspector William Gerry gave a summary of the inspections at the subject property. Inspector Gerry stated that on May 20, 2015 the case was transferred to him for follow-up and further enforcement. Inspector Gerry stated that Michael Musumeci, the Successor Trustee has failed to maintain adequate landscaping on the property.

Michael Musumeci stated that he wants the property to be in full compliance, but the property is flooding with irrigation water coming from the neighbor. He also stated that he has California native grass in the backyard ready to plant, but the soil does not hold water. Mr. Musumeci says he wants to comply but in the past when the property received landscaping, the landscaping did not last due to the condition of the soil.

Mr. Musumeci stated that he ceased coming into compliance because Inspector Gerry had told him that the City would remove the rental equipment and impound it. He stated that he needs the equipment to remove the concrete that was installed in 1964 in order to replace the water main, and to sift through the top layers of the soil to prepare the soil for landscaping. He says if he replaces the water main and removes the top soil, the landscape should last for years.

The Board questioned whether the subject property's soil conditions could be so different from the neighboring properties that have compliant landscaping, and whether there was a need for the back hoe of that size for the small front yard. Mr. Musumeci stated he required the large machinery due to the soil conditions, and that he would need it for 30 days to complete the work.

There was a motion by Commissioner Parker, seconded by Commissioner Parsons, to order as follows:

Motion to uphold the Staff's recommendation and adopt a resolution that on or before January 15, 2016, the Property Owner(s) shall pay Administrative Penalties to the City of San Jose, pursuant to San Jose Municipal Code Section 1.14.090, in the amount of \$1,410.50. If full compliance with the Board's Order is not achieved by January 15, 2016, the Property Owner(s) shall pay Administrative Penalties in the amount of \$3,000,

and an additional penalty in the amount of \$75.00 per day shall accrue after January 16, 2016 for each day the Property Owner is not in compliance, until the date of compliance with the Board's Order, up to a maximum of \$100,000.00.

AYES: Cabanayan, Ditlevsen, Kenny, Parker, Parsons and Shearin
NAYS:
ABSENT: Bains

7. **Request for Excused Absence**

8. **Other Business**

9. **Open Forum - Oral Communication from the Public**

10. **Adjournment**

Commissioner Parker asked that they adjourned the meeting in honor of the Veterans that served our Country. There was a motion by Commissioner Kenny, seconded by Commissioner Parsons to adjourn the meeting in honor of the Veterans that served our Country. Chair Parker adjourned the meeting at 7:48 p.m. The next regular meeting will be held December 10, 2015 at 6:30 p.m. in the City Hall Council Chambers.